

Dayna Christian, OSB No. 97336
E-Mail: dayna.christian@immixlaw.com
IMMIX LAW GROUP PC
121 SW Salmon Street, Suite 1000
Portland, Oregon 97204
Phone: (503) 802-5533
Email: dayna.christian@immixlaw.com

Charles A. Burke, NCB No. 42528 (*pro hac vice* admission pending)
Email: CBurke@wcsr.com
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
One West Fourth Street
Winston-Salem, NC 27101
Phone: (336) 721-3625
Email: CBurke@wcsr.com
Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CHRISTOPHER DOUGLAS,

Case No. 3:11-cv-01204-BR

Plaintiff,

v.

LEIGH KENO, LESLIE KENO and THEODORE
ALEXANDER USA, INC.,

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
COMPLAINT**

Jury Trial Demanded

Defendants.

Defendants Leigh Keno, Leslie Keno, and Theodore Alexander USA, Inc. (collectively
“Defendants”) by and through their undersigned counsel, and pursuant to Federal Rule of Civil

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Procedure 12 hereby file their Answer and Affirmative Defenses to Plaintiff Christopher Douglas' ("Plaintiff or Douglas") Complaint, responding as follows:

NATURE OF THE ACTION

1. Defendants admit that Plaintiff's Complaint purports to state the claims identified in Paragraph 1; however, Defendants deny that Plaintiff's Complaint has actually stated any claim upon which relief can be granted.
2. Based on information and belief, Defendants admit the allegations contained in Paragraph 2.
3. Based on information and belief, Defendants admit the allegations contained in Paragraph 3.
4. Based on information and belief, Defendants admit the allegations contained in Paragraph 4.

THE PARTIES

5. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 5 and therefore deny them.
6. Defendants admit the allegations contained in Paragraph 6.
7. Defendants admit the allegations contained in Paragraph 7.
8. Defendants admit the allegations contained in Paragraph 8.

FACTUAL ALLEGATIONS

9. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 9 and therefore deny them.

10. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 10 and therefore deny them.

11. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 11 and therefore deny them.

12. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 12 and therefore deny them.

13. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 13 and therefore deny them.

14. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 14 and therefore deny them.

15. Defendants admit the allegations contained in Paragraph 15.

16. Defendants admit the allegations contained in Paragraph 16.

17. Defendants admit the allegations contained in Paragraph 17.

18. Defendants admit the allegations contained in Paragraph 18.

19. Defendants admit that Leigh Keno and Leslie Keno were involved in the design of the Keno Bros. furniture line. Responding further, Defendants deny the remaining allegations contained in Paragraph 19.

20. Defendants admit the allegations contained in Paragraph 20.

21. Defendants admit that the Keno Bros. furniture line does include a piece entitled "Peek-a-boo!". Defendants further admit that Leigh Keno and Leslie Keno were involved in the design of the Peek-a-boo!. Exhibit B to Plaintiff's Complaint appears to be an image of the Peek-a-boo!. Responding further, Defendants deny the remaining allegations contained in Paragraph 21.

22. Defendants deny the allegations contained in Paragraph 22.

23. Defendants deny the allegations contained in Paragraph 23.

24. Defendants deny the allegations contained in Paragraph 24.

25. Defendants deny the allegations contained in Paragraph 25.

26. Defendants admit that they received a letter from Plaintiff's legal counsel dated August 10, 2011. Defendants further admit that they have continued to sell the Peek-a-boo! screen after receiving this letter, as they are lawfully entitled to do. Otherwise, Defendants deny the remaining allegations of Paragraph 26.

27. Defendants deny the allegations contained in Paragraph 27.
28. Defendants deny the allegations contained in Paragraph 28.

FIRST CAUSE OF ACTION
(Trademark Infringement – Trade Dress – Lanham Act § 43)

29. Defendants reassert and incorporate their responses to the preceding paragraphs as if fully set forth verbatim herein.

30. Defendants deny the allegations contained in Paragraph 30.

31. Defendants deny the allegations contained in Paragraph 31.

32. Defendants deny the allegations contained in Paragraph 32.

33. Defendants deny the allegations contained in Paragraph 33.

34. Defendants deny the allegations contained in Paragraph 34.

SECOND CAUSE OF ACTION
(Unfair Competition –Lanham Act § 43)

35. Defendants reassert and incorporate their responses to the preceding paragraphs as if fully set forth verbatim herein.

36. Defendants deny the allegations contained in Paragraph 36.

37. Defendants deny the allegations contained in Paragraph 37.
38. Defendants deny the allegations contained in Paragraph 38.
39. Defendants deny the allegations contained in Paragraph 39.

THIRD CAUSE OF ACTION
(False Description –Lanham Act § 43)

40. Defendants reassert and incorporate their responses to the preceding paragraphs as if fully set forth verbatim herein.
41. Defendants deny the allegations contained in Paragraph 41.
42. Defendants deny the allegations contained in Paragraph 42.
43. Defendants deny the allegations contained in Paragraph 43.

FOURTH CAUSE OF ACTION
(Violations of Oregon Unlawful Trade Practices Act, ORS 6456.605 to 646.656)

44. Defendants reassert and incorporate their responses to the preceding paragraphs as if fully set forth verbatim herein.
45. Defendants deny the allegations contained in Paragraph 45.
46. Defendants deny the allegations contained in Paragraph 46.
47. Defendants deny the allegations contained in Paragraph 47.
48. Defendants deny the allegations contained in Paragraph 48.
49. Defendants deny the allegations contained in Paragraph 49.

FIFTH CAUSE OF ACTION
(Injury to Business Reputation – Common Law)

50. Defendants reassert and incorporate their responses to the preceding paragraphs as if fully set forth verbatim herein.
51. Defendants deny the allegations contained in Paragraph 51.
52. Defendants deny the allegations contained in Paragraph 52.

53. Defendants deny the allegations contained in Paragraph 53.

SIXTH CAUSE OF ACTION
(Injury to Business Reputation – Common Law)

54. Defendants reassert and incorporate their responses to the preceding paragraphs as if fully set forth verbatim herein.

55. Defendants deny the allegations contained in Paragraph 55.

56. Defendants deny the allegations contained in Paragraph 56.

57. Defendants deny the allegations contained in Paragraph 57.

58. Defendants deny the allegations contained in Paragraph 58.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

59. Plaintiff's complaint fails to state a claim upon which relief may be granted and further fails to state facts sufficient to entitle Plaintiff to the relief sought or to any other relief.

SECOND AFFIRMATIVE DEFENSE
(Waiver)

60. Plaintiff's claims are barred by waiver.

THIRD AFFIRMATIVE DEFENSE
(Estoppel)

61. Plaintiff's claims are barred by operation of estoppel.

FOURTH AFFIRMATIVE DEFENSE
(Laches)

62. Plaintiff's claims are barred by operation of laches.

FIFTH AFFIRMATIVE DEFENSE
(Acquiescence)

63. Plaintiff's claims are barred by Plaintiff's acquiescence.

**SIXTH AFFIRMATIVE DEFENSE
(Statute of Limitations)**

64. Plaintiff's claims are barred by the applicable statute of limitations.

**SEVENTH AFFIRMATIVE DEFENSE
(Invalidity)**

65. Plaintiff does not own any legally protectable rights in the furniture design alleged, that furniture design has not acquired secondary meaning in the marketplace sufficient to support any trade dress rights, and Plaintiff's asserted trade dress rights are based upon non-protectable functional features.

**EIGHTH AFFIRMATIVE DEFENSE
(Non-Infringement)**

66. Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged trade dress is not infringed.

**NINTH AFFIRMATIVE DEFENSE
(No Likelihood of Confusion)**

67. Plaintiff's claims are barred because the accused actions do not create any likelihood of confusion.

**TENTH AFFIRMATIVE DEFENSE
(No Damages)**

68. Plaintiff's claims are barred because the accused actions have not resulted in any damages to Plaintiff.

**ELEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

69. Plaintiff's claims are barred by Plaintiff's own unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Defendants Leigh Keno, Leslie Keno, and Theodore Alexander USA, Inc. respectfully request that this Court grant the following relief:

- (1) Enter an order that Plaintiff Christopher Douglas shall have nothing by virtue of his Complaint and that Plaintiff's claims shall be dismissed in their entirety with prejudice;
- (2) Enter an order that Plaintiff has no protectable trade dress, and in any event that Defendants have not infringed any alleged trade dress of Plaintiff Christopher Douglas;
- (3) Award Defendants' costs and attorneys' fees incurred in this action;
- (4) Grant a jury trial on all issues so triable; and
- (5) Award such other and further relief as the Court deems just and proper.

Respectfully submitted this 21nd day of December, 2011.

IMMIX LAW GROUP, PC



Dayna J. Christian
121 SW Salmon St.
Portland, OR 97204
Phone: 503.802.5537
Email: dayna.chrisitan@immixlaw.com

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Charles A. Burke, Esq.¹
One West Fourth Street
Winston-Salem, NC 27101
Phone: 336.721.3625
Email: cburke@wCSR.com

Attorneys for Defendants Leigh Keno, Leslie Keno, and Theodore Alexander USA, Inc.

¹ Not admitted in Oregon. *Pro Hac Vice* motion pending.